Supreme Court, U. S.
FILED
SEP 6 1978
MICHAEL RODAK, JR., C

78-480

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

JOHN ERIC BLANCO,

Petitioner,

vs.

THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE MUNICIPAL COURT
OF VENTURA COUNTY,
OXNARD DEPARTMENT,
STATE OF CALIFORNIA

IRVING A. KANAREK
14617 Victory Boulevard
Suite 1
Van Nuys, California 91401
(213) 782-2790; 873-4255

Attorney for Petitioner

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

JOHN ERIC BLANCO,

Petitioner,

vs.

THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE MUNICIPAL COURT
OF VENTURA COUNTY,
OXNARD DEPARTMENT,
STATE OF CALIFORNIA

IRVING A. KANAREK
14617 Victory Boulevard
Suite 1
Van Nuys, California 91401
(213) 782-2790; 873-4255

Attorney for Petitioner

TOPICAL INDEX

	Page
Table of Authorities	iii
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED	2
STATEMENT OF THE CASE	20
REASONS FOR GRANTING THE WRIT	23
1. BOYKIN INFIRMITY INFECTS CALIFORNIA BAIL FORFEITURE PROCEDURE INVOLVING TRAFFIC TICKETS AND THIS PROCEDURE DIRECTLY INVOLVES UNTOLD NUMBERS OF PERSONS ANNUALLY, THEREFORE, PETITIONER'S ALLEGED SPEEDING "PRIORS" ARE UNCONSTITUTIONAL, HIS JAIL SENTENCE UNDER THE CALIFORNIA RECIDIVIST STATUTE IS IMPROPER, AND THE ERROR IS OF SUFFICIENT IMPORTANCE TO JUSTIFY CERTIORARI.	23

2. THE ISSUE OF WHETHER TRIAL JUDGE COVERED UP SECRET COMMUNICATION FROM DELIBERATING JURY IN ALLEGED APPARENT EFFORT TO SECURE CONVICTION OF PETITIONER AT ALL COSTS, EVEN BY OBVIOUSLY UNCONSTITUTIONAL MEANS, INVOLVES JUDGE'S REFUSAL TO TESTIFY IN MATTER OF ALLEGED JUDICIAL MISCONDUCT TENDING TO DESTROY PUBLIC CONFIDENCE IN ENTIRE CRIMINAL JUSTICE SYSTEM AND IS, THEREFORE, SUFFICIENTLY IMPORTANT TO REQUIRE REVIEW BY THIS HONORABLE COURT. 26

CONCLUSION 30

APPENDIX A
Order of the Appellate Department of the Superior Court of the State of California for the County of Ventura Affirming Judgment of Conviction

APPENDIX B
Order of the Appellate Department of the Superior Court of the State of California for the County of Ventura Denying Petitioner's Petition for Rehearing and Certification to the California Court of Appeal

TABLE OF AUTHORITIES

Cases	Page
Argersberger v. Hamlin, (1972) 407 U.S. 25	27
Boykin v. Alabama, (1969) 395 U.S. 238	2, 24, 25
In re Johnson, (1964) 62 Cal.2d 325	27
In re Tahl, (1969) 1 Cal.3d 122	2, 24, 25
Mempa v. Rhay, (1972) 399 U.S. 128	27
Mills v. Municipal Court, (1973) 10 Cal.3d 288	27
People v. Butler, (1975) 47 Cal.App.3d 273	28
People ex rel. Board of State Harbor Comm. v. Southern Pac. Co., 177 Cal. 55	28
People v. Miner, (1977) 68 Cal.App.3d Supp. 1	2, 24, 25
People v. Weatherford, (1945) 27 Cal.2d 401	27

Rogers v. United States,
(1975) 422 U.S. 325 28

Constitutions

California Constitution,
Article 1, Section 15 3, 27

United States Constitution:

Sixth Amendment 3, 27

Fourteenth Amendment 3, 25, 27

Statutes

California Evidence Code:

Section 450 4, 28

Section 451 5, 28

Section 452 7, 28

Section 453 7, 28

Section 703 8, 29

California Penal Code:

Section 16 8, 23

Section 17(a) 8, 23

Section 19c 9, 23

California Penal Code:

Section 987.2(d) 9, 27

Section 1042.5 11, 23

Section 1138 11, 27, 28

California Vehicle Code:

Section 13,103 12, 23

Section 22,348(a) 12, 20, 23

Section 40,000.1 12, 23

Section 40,000.28 13, 20, 21, 23

Section 40,507 13, 23

Section 40,510 13, 23

Section 40,511 14, 23

Section 40,512 14, 23

Section 40,513 15, 23

Section 40,519 16, 23

Section 42,521 18, 23

Section 42,001(a) 19, 23

Section 42,004 19, 23

28 U.S.C. 1257 (3) 2

IN THE
SUPREME COURT
OF THE UNITED STATES
October Term, 1978
No. _____

JOHN ERIC BLANCO,

Petitioner,

vs.

THE STATE OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

To: The Honorable Chief Justice, and Associate Justices of the Supreme Court of the United States.

Petitioner respectfully asks the issuance of a Writ of Certiorari to review the judgment of the Appellate Department of the Superior Court of the State of California for the County of Ventura on May 23, 1978, followed by denial of Petitioner's petition for rehearing or for certification to the Court of Appeal on June 8, 1978, which judgment affirmed the judgment of the Municipal Court of the Ventura Judicial District, Oxnard Department, County of Ventura, State of California. There was no written opinion either in the trial Court or in the reviewing court. See: Appendix A and Appendix B.

This Court has jurisdiction to review the judgment above described under 28 U. S. C. 1257 (3).

QUESTIONS PRESENTED

---

1. Does Boykin-Tahl-Miner infirmity in procedure permitting posting and forfeiture of bail on speeding charge without appearing in court result in violationcf due process and voiding speeding "priors" based on such procedure so as to make inapplicable recidivist statute authorizing jail sentence on conviction of subsequent speeding charge, where in absence of "priors" no jail sentence can be imposed?

2. Is alleged trial judge cover-up of secret communication from deliberating jury in alleged apparent effort to secure conviction of petitioner at all costs, even by obviously unconstitutional means, involving judge's refusal to testity in matter of alleged judicial misconduct tending to destroy public confidence in entire criminal justice system of sufficient importance to require review by this honorable court?

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

UNITED STATES CONSTITUTION:

In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with

the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Sixth Amendment

. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fourteenth Amendment, Section 1

CALIFORNIA CONSTITUTION:

Art. 1, §15

"15. Criminal cases; speedy public trial; compel attendance of witnesses; appearance and defense; counsel; depositions; double jeopardy; self-incrimination; due process

"Sec. 15. The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant. The Legislature may provide for the deposition of a witness in the presence of the defendant and the defendant's counsel.

"Persons may not twice be put in jeopardy for the same offense, be compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or property without due process of law. (Added Nov. 5, 1974.)"

CALIFORNIA EVIDENCE CODE:

Section 450. Judicial notice may not be taken of any matter unless authorized or required by law.

"451. Judicial notice shall be taken of:

"(a) The decisional, constitutional, and public statutory law of this state and of the United States and the provisions of any charter described in Section $7\frac{1}{2}$ or 8 of Article XI of the California Constitution.

"(b) Any matter made a subject of judicial notice by Section 11383, 11384, or 18576 of the Government Code or by Section 307 of Title 44 of the United States Code.

"(c) Rules of professional conduct for members of the bar adopted pursuant to Section 6076 of the Business and Professions Code and rules of practice and procedure for the courts of this state adopted by

the Judicial Council.

"(d) Rules of pleading, practice, and procedure prescribed by the United States Supreme Court, such as the Rules of the United States Supreme Court, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Admiralty Rules, the Rules of the Court of Claims, the Rules of the Customs Court, and the General Orders and Forms in Bankruptcy.

"(e) The true signification of all English words and phrases and of all legal expressions.

"(f) Facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute.

Section 451

"452. Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

"(a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.

"(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.

"(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

"(d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

"(e) Rules of court of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

"(f) The law of an organization of nations and of foreign nations and public entities in foreign nations.

"(g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.

"(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasononably indisputable accuracy.

Section 452

"453. The trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and:

"(a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and

"(b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.

Section 453

"§703. Judge as witness. (a) Before the judge presiding at the trial of an action may be called to testify in that trial as a witness, he shall, in proceedings held out of the presence and hearing of the jury, inform the parties of the information he has concerning any fact or matter about which he will be called to testify.

"(b) Against the objection of a party, the judge presiding at the trial of an action may not testify in that trial as a witness. Upon such objection, the judge shall declare a mistrial and order the action assigned for trial before another judge.

"(c) The calling of the judge presiding at a trial to testify in that trial as a witness shall be deemed a consent to the granting of a motion for mistrial, and an objection to such calling of a judge shall be deemed a motion for mistrial.

"(d) In the absence of objection by a party, the judge presiding at the trial of an action may testify in that trial as a witness. (Stats. 1965, c. 299, §703.)

Section 703

CALIFORNIA PENAL CODE:

Section 16. Crimes and public offenses include:

1. Felonies;
2. Misdemeanors; and
3. Infractions

Section 17. Felony; misdemeanor; classification of offenses

(a) A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime or pbulic offense is a misdemeanor except those offenses that are classified as infractions.

Section 19c. Infractions; punishment; jury trial; right to public defender

An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him unless he is arrested and not released on his written promise to appear, his own recognizance, or a deposit of bail.

Section 987.2(d)

"§987.2 Assigned counsel; compensation; public defenders; fees chargeable to department of corrections

"(a) In any case in which a minor, desires but is unable to employ counsel and in which counsel is assigned in the superior court, municipal court, or justice court to represent such a person in a criminal trial, proceeding or appeal, such counsel, in a county or city and county in which there is no public defender, or in a case in which the court finds that because of conflict of interest or other reasons the public defender has properly refused to represent the person accused, shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the

[redacted]ral fund of the county.

"(b) The sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in such cases.

"(c) The board of supervisors may by contract provide that any public defender duly appointed or elected may charge reasonable fees to the Department of Corrections for representing inmates of prisons under its control, and the Department of Corrections may upon approval by the court pay such fees into the county treasury to be placed in the general fund of the county.

"(d) Counsel shall be appointed to represent, in the municipal or justice court, a person who desires but is unable to employ counsel, when it appears that such appointment is necessary to provide an adequate and effective defense for defendant. (Formerly §987a, added by Stats. 1965, c. 1707, p. 3841, §1; Stats. 1967, c. 941, p. 2439, §1. Renumbered 987.2 and amended by Stats. 1970, c. 723, p. 1350, §1; Stats. 1971, c. 1003,

p. 1920, §1.)

Section 1042.5 Trial of infraction

Trial of an infraction shall be by the court, but when a defendant has been charged with an infraction and with a public offense for which there is a right to jury trial and a jury trial is not waived, the court may order that the offenses be tried together by jury or that they be tried separately with the infraction being tried by the court either in the same proceeding or a separate proceeding as may be appropriate.

Section 1138

"§1138. Information for jury after retirement; return to court; notice to counsel

"After the jury have retired for deliberation, if there be any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the case, they must require the officer to conduct them into court. Upon being brought into court, the information required must be given in the presence of, or after notice to, the prosecuting attorney, and the defendant or his counsel, or after they have been called.

(Enacted 1872. Amended by Code Am. 1873-74, c. 614, p. 445, §65; Stats. 1951, c. 1674, p. 3848, §103.)"

CALIFORNIA VEHICLE CODE:

Equivalents of Conviction

13103. For purpose of this division, a plea of nolo contendere or a plea of guilty or judgment of guilty, whether probation is granted or not, a forfeiture of bail, or a finding reported under Section 1816, constitutes a conviction of any offense prescribed by this code, other than offenses relating to the unlawful parking of vehicles.

Temporary Maximum Speed Limit

22348. (a) Notwithstanding Section 22349, 22356, or any other provision of this chapter to the contrary, no person shall drive a vehicle upon a highway at a speed greater than 55 miles per hour.

Infractions

40000.1. Except as otherwise provided in this article, it is unlawful and constitutes an infraction for any person to violate, or fail to comply with any provision of this code, or any local ordinance adopted pursuant to this code.

Misdemeanor: Three or More Violations

40000.28. Any offense which would otherwise be an infraction is a misdemeanor if a defendant has been convicted of three or more violations of this code or any local ordinance adopted pursuant to this code within the 12-month period immediately preceding the commission of the offense and such prior convictions are admitted by the defendant or alleged in the accusatory pleading. For this purpose, a bail forfeiture shall be deemed to be a conviction of the offense charged.

This section shall have no application to violations by pedestrians.

Appearance by Counsel

40507. A written promise to appear in court may be complied with by an appearance by counsel.

Deposit of Bail

40510. The defendant may, prior to the date upon which he promised to appear, deposit bail with the magistrate or the person authorized to receive a deposit of bail.

For any offense which is not declared to be a felony, such deposit of bail may be by the personal check of the person who has signed a written promise to appear, if he furnishes to the person authorized to receive a deposit of bail

satisfactory evidence of residence in this state and if such personal check is drawn on a banking institution located in this state.

Fixing Bail

40511. If bail has not been previously fixed and approved by the judges of the court in accordance with Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall endorse upon the notice a statement signed by him in the form set forth in Section 815a of the Penal Code.

Forfeiture of Bail

40512. If at the time when the case is called for arraignment before the magistrate the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited and may in his discretion order that no further proceedings be had in the case, unless the defendant has been charged with violation of Section 23111 or 23112, or subdivision (a) of Section 23113, and he has been previously convicted of the same, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him to appear, the magistrate may declare the bail forfeited and order that no further proceedings shall be had in such case.

Upon the making of the order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the city or county treasury as the case may be.

Filing of Complaint

40513. (a) Whenever written notice to appear has been prepared, delivered, and filed with the court, or whenever notice has been given pursuant to the provisions of Section 41102, an exact and legible duplicate copy of the notice when filed with the magistrate, in lieu of a verified complaint, shall constitute a complaint to which the defendant may plead "guilty" or "nolo contendere."

If, however, the defendant violates his promise to appear in court or does not deposit lawful bail, or pleads other than "guilty" or "nolo contendere" to the offense charged, a complaint shall be filed which shall conform to the provisions of Chapter 2 (comencing with Section 948) of Title 5, Part 2, of the Penal Code, and which shall be deemed to be an original complaint, and thereafter proceedings shall be had as provided by law, except that a defendant may, by an agreement in writing, subscribed by him and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear.

Trial Scheduling; Written Not Guilty Plea

"40519. (a) Any person who has received a written notice to appear for an infraction, may, prior to the time at which he is required to appear, make a deposit and declare his intention to plead not guilty to the clerk of the court named in the notice to appear. The deposit shall be in the amount of bail established pursuant to the provisions of Section 1269b of the Penal Code, together with any assessment required by Section 42006 or 42050 of this code, for the offense charged, and shall be used for the purpose of guaranteeing the appearance of the defendant at the time and place scheduled by the clerk for arraignment and for trial, and to apply toward the payment of any fine or assessment prescribed by the court in the event of conviction. The case shall thereupon be set for arraignment and trial on the same date, unless the defendant requests separate arraignment.

"(b) Any person who has received a written notice to appear for an infraction may, prior to the time at which he is required to appear, plead not-guilty in writing in lieu of appearing in person. The written plea shall be directed to the court named in the notice to appear and, if mailed, shall be sent by certified or registered mail postmarked not later than five days prior to the day upon which

appearance is required. Such written plea and request to the court shall be accompanied by a deposit of twenty-five dollars ($25) which amount shall be used for the purpose of guaranteeing the appearance of the defendant at the time and place set by the court for trial and to apply toward the payment of fine, if any, prescribed by the court upon conviction. Thereafter, the case shall be conducted in the same manner as if the defendant had appeared in person, had made his plea in open court, and had deposited such sum of twenty-five dollars ($25) as bail. The court or the clerk of the court shall notify the accused of the time and place of trial by first-class mail postmarked at least 10 days prior to the time and place of trial. Any person using this procedure shall be deemed to have waived his right to be tried within the statutory period.

"(c) Any person using the procedure set forth in subdivision (a) or (b) shall be deemed to have given his written promise to appear at the time designated by the court for trial, and failure to appear at the trial shall constitute a misdemeanor.

"(d) This section shall remain in effect only until July 1, 1976, and as of such date is repealed, unless a later enacted statute, which is chaptered

before July 1, 1976, deletes or extends such date."

Forfeited Bail and Penalty Assessment: Deposit by Mail

"40521. (a) Except when personal appearance is required by the bail schedule established under Section 1269b of the Penal Code, a person to whom a notice to appear has been issued under Section 40500 who intends to forfeit bail and to pay any penalty assessment may forward by United States mail the amount fixed as bail, together with the appropriate amount of any penalty assessment, to the person authorized to receive a deposit of bail. Notwithstanding the provisions of Section 40510, such amounts may be paid in the form of personal check of the person who has signed a written promise to appear and drawn on a banking institution located in this state, a bank cashier's check, or a money order. Bail and any penalty assessment shall be paid not later than the day of appearance set forth in the notice to appear.

"(b) Bail forwarded by mail shall be effective only when the funds are actually received.

"(c) The provisions of Section 40512 are applicable to bail pursuant

to this section. Upon the making of the order pursuant to Section 40512 that no further proceedings be had, the amount paid as bail shall be paid into the city or county treasury, as the case may be, and the penalty assessment shall be transmitted to the State Treasury in the manner provided in Section 42052."

Infractions and Special Misdemeanors

42001. (a) Except as provided in Section 42001.5, every person convicted of an infraction for a violation of this code or of any local ordinance adopted pursuant to this code shall be punished upon a first conviction by a fine not exceeding fifty dollars ($50) and for a second conviction within a period of one year by a fine of not exceeding one hundred dollars ($100) and for a third or any subsequent conviction within a period of one year by a fine of not exceeding two hundred firty dollars ($250).

Determination of Penalty

42004. For the purpose of determining the penalty to be imposed pursuant to this code, the court may consider a written report from the Department of Motor Vehicles containing information from its records showing prior convictions; and the communication is prima facie evidence

of such convictions, if the defendant admits them, regardless of whether or not the complaint commencing the proceedings has alleged prior convictions.

For the purpose of this chapter a prior bail forfeiture shall be deemed to be a conviction of the offense charged.

STATEMENT OF THE CASE

Petitioner was charged by a misdemeanor complaint, filed in the Municipal Court of the Ventura Judicial District, Oxnard Branch, Ventura County, State of California, charging violation of California Vehicle Code Section 22,348(a) by speeding on April 22, 1977, and with three (3) convictions for speeding within one year prior to that date, thereby permitting jury trial and sentence upon conviction as a misdeanant under the California recidivist statute, Vehicle Code Section 40,000.28. After jury trial in said Court, he was found guilty and sentenced, inter alia to thirty (30) days in the Ventura County Jail on August 5, 1977.

The thirty (30) day sentence was possible because of the three (3) "priors." Ordinarily, i.e., in the absence of the priors, conviction on a speeding ticket in California is treated as an infraction permitting neither jury trial nor jail sentence. See Reasons For Granting the Writ, infra.

Two (2) of the three (3) priors occurred by way of petitioner posting and forfeiting bail without appearing in court at all, a procedure encouraged by California statute. In this procedure, no provision is made for either giving or recording an official admonition that a possible consequence is that the bail forfeiture will be treated as a conviction for the purposes of the recidivist statute, Vehicle Code Section 40,000.00.28 and that therefore conviction of a later offense might carry with it a jail sentence, not permitting the ordinary bail forfeiture procedure.

A basic factual issue in the case was the credibility of the testimony of the officer who gave petitioner the speeding citation, and important to that credibility were (1) the geographical location on the freeway where the officer indicated on the citation that he stopped plaintiff, and (2) the geographical location of the alleged offense for which the petitioner was cited (noted on the citation), and (3) the nature of the freeway, i.e., whether it was so winding that in view of admitted traffic plaintiff could not have been speeding.

During the jury deliberations, the jury sent through the bailiff a written request to the judge for a map of the pertinent streets and freeways and the written traffic citation. The judge turned down the written request by writing on its back and the writing was returned to the jury and never showed up in court. The judge did not inform petitioner's defense counsel either of the jury request or the fact of the denial.

Upon motion for new trial the petitioner's defense counsel raised the question of the written request and the judge denied its existence until the jury foreman testified in such manner as to make it overwhelmingly obvious that the written request had been made and denied in secret as far as petitioner's defense counsel was concerned. At this point defense counsel promptly invoked the procedure for having the trial judge testify under oath as to his intention in not revealing the incident in connection with the proposition that the judge intended to make sure that petitioner was convicted at all costs, even at the expense of obviously unconstitutional conduct. The trial judge offered a refused stipulation that the incident occurred but refused to testify under oath. The motion for new trial was denied.

After petitioner was sentenced, he appealed to the Appellate Department of the Superior Court of the State of California, for the County of Ventura, and the judgment was affirmed on May 23, 1978, without written opinion (see Appendix A). Petitioner exhausted his state remedies by petitioning said Court for a rehearing and/or certification to the California Court of Appeal. The said petition was denied on June 8, 1977 (see Appendix B).

Petitioner has been at large on Twenty-five Hundred Dollars ($2,500.00) Bail since the time of sentencing, August 5, 1977.

REASONS FOR GRANTING THE WRIT

---

1. BOYKIN INFIRMITY INFECTS CALIFORNIA BAIL FORFEITURE PROCEDURE INVOLVING TRAFFIC TICKETS AND THIS PROCEDURE DIRECTLY INVOLVES UNTOLD NUMBERS OF PERSONS ANNUALLY. THEREFORE, PETITIONER'S ALLEGED SPEEDING "PRIORS" ARE UNCONSTITUTIONAL, HIS JAIL SENTENCE UNDER THE CALIFORNIA RECIDIVIST STATUTE IS IMPROPER, AND THE ERROR IS OF SUFFICIENT IMPORTANCE TO JUSTIFY CERTIORARI.

A California motorist who does not wish to fight a traffic ticket for speeding ordinarily has two options: he may appear in court and plead guilty; alternatively, he may post and forfeit bail without appearance. In either event, he is regarded as having been convicted for the purposes of the recidivist statute which permits punishment by imprisonment if he has three prior traffic convictions within the year (if the recidivist statute doesn't apply, no imprisonment can be given). See: California Penal Code Sections: 16; 17(a); 19c; 1042.5; California Vehicle Code Sections: 13,103; 22,348(a); 40,000.1; 40,000.28; 40,507; 40,510; 40,511; 40,512; 40,513; 40,519; 40,521; 42,001(a); 42,004.

The bail forfeiture procedure provides no method of recording any official admonishment as to the consequences of following it. The major consequence is, of course, that the unsuspecting motorist (who gives up a good defense to a speeding charge in order to save time in the belief that this ends the matter) may suddenly find that for a renewed speeding offense he is subject to a jail sentence.

Boykin v. Alabama (1969) 395 U.S. 238 establishes, inter alia, the principle that Fourteenth Amendment due process is violated by a guilty plea that is accepted without official admonishment, affirmatively appearing in the record and proved by the prosecution, that the plea was intelligent and that a plea is not intelligent unless the defendant is officially admonished as to the full consequences of his plea.

Hence, in California if the defendant on a speeding ticket appears in Court he is admonished as a matter of course with respect to the consequences) before a guilty plea will be taken by the Court (People v. Miner (1977) 68 Cal.App. 3d Supp. 1, 4; compare: In re Tahl (1969) 1 Cal. 3d 122).

Here, the basis for sentencing petitioner to jail for thirty (30) days on a speeding ticket ordinarily carrying no possibility of a jail sentence was the recidivist allegation that he had been convicted of three (3) "priors" during the year. Two of the alleged "convictions" were bail forfeitures on speeding tickets, i.e., situations where petitioner (though perhaps having a good

defense) forfeited bail without appearing in court in order to save times and without knowing that he was laying the groundwork for a jail sentence if he were later convicted of the same offense within the year.

Therefore, the Fourteenth Amendment invalidates the two (2) "priors" on two separate theories:

(1) By direct application of Boykin, due process rendered them improper because of lack of official admonition in the record; and

(2) There is no sane reason why a distinction should be drawn with respect to official admonition in the record between the situation where the motorist appears in Court (Miner, supra) and the one, where, to save time he takes advantage of the opportunity not to appear in Court. Hence, as a matter of equal protection the Boykin-Miner-Tahl rule should have been followed in the bail forfeiture situation (e.g., by written form acknowledged in writing to have been read by the motorist).

Since the two "priors" were invalid because of due process and equal protection considerations, the recidivist statute could not properly apply, and it was improper to sentence petitioner to jail.

Untold numbers of California motorists are lured annually into taking the bail forfeiture option in the mistaken belief that this ends the matter so that it makes more sense to post and forfeit bail at the motorist's convenience, than

to speed time in Court to fight what appears to be a trivial matter (even though there is a good defense). Such apparent trickery on the part of the state on such a wholesale basis obviously has a serious tendency to breed disrespect for all processes of law and government. Therefore, the matter is of sufficient importance for this Honorable Court to end the deceptive practice once and for all by granting certiorari herein and laying down guidelines regarding proper admonition when the motorist takes advantage of the purportedly practical and time-saving bail forfeiture procedure with respect to minor traffic violations.

2. THE ISSUE OF WHETHER TRIAL JUDGE COVERED UP SECRET COMMUNICATION FROM DELIBERATING JURY IN ALLEGED APPARENT EFFORT TO SECURE CONVICTION OF PETITIONER AT ALL COSTS, EVEN BY OBVIOUSLY UNCONSTITUTIONAL MEANS, INVOLVES JUDGE'S REFUSAL TO TESTIFY IN MATTER OF ALLEGED JUDICIAL MISCONDUCT TENDING TO DESTROY PUBLIC CONFIDENCE IN ENTIRE CRIMINAL JUSTICE SYSTEM AND IS, THEREFORE, SUFFICIENTLY IMPORTANT TO REQUIRE REVIEW BY THIS HONORABLE COURT.

Upon motion for new trial, it was conclusively established that the trial judge had failed to notify

defense counsel of his denial of a written request by the jury during its deliberations of relevant evidence (admissible by way of judicial notice). At said time, the judge first denied the incident and only admitted the same when confronted with testimony by the jury foreman. Petitioner alleges the issue arose as to whether or not the judge's purpose was to insure conviction of petitioner at all costs, even by obviously unconstitutional means; he refused to be examined under oath as to his conduct and intent with respect to the written jury request. (See STATEMENT OF THE CASE, supra, for details.)

It is a long established constitutional principle that in state prosecution of criminal cases, no matter what level the offense, defense counsel (unless knowingly waived) must be present at every stage of the judicial proceedings. See: United States Constitution, Amendments Six and Fourteen; Mempa v. Rhay (1972) 399 U.S. 128; Argersberger v. Hemlin (1972) 407 U.S. 25; Mills v. Municipal Court (1973) 10 Cal.3d 288, 300. The principle is reiterated in California constitutional provision and statute (California Constitution, Article 1, Section 15; California Penal Code Section 987.2(d), formerly Section 987a; In re Johnson (1964) 62 Cal. 2d 325, 329).

As an obvious application of this principle, it is well settled, by California statute and case law that it is gross misconduct for the trial judge to communicate with a deliberating jury upon any non-trivial matter without notification and presence of defense counsel. See: California Penal Code Section 1138; People v. Weatherford (1945)

27 Cal.2d 401. Compare: Rogers v. United States (1975) 422 U.S. 325 (same principle followed in federal criminal prosecutions for same ultimate reason).

Furthermore, by California statute and case law, a trial judge must honor a deliberating jury's request for evidence on non-trivial issues considered by the jury to be important in resolving them (California Penal Code Section 1138; People v. Butler (1975) 47 Cal.App.3d 273).

Finally, California statute and case law authorize admission of the evidence requested by the deliberating jury herein (and turned down by the judge, arbitrarily and out of hand) under the doctrine of judicial notice. See: California Evidence Code Sections 450, 451, 452, 453; People ex rel. Board of State Harbor Comm. v. Southern Pac. Co., 177 Cal. 55.

In view of these principles it is arguable that:

(1) The trial judge violated constitutional principle in the first instance by unilaterally denying the jury's request without informing defense counsel of the request or the action and without giving defense counsel an opportunity to advocate that the jury's request be granted.

(2) The trial judge again erred in not granting the jury's request. The evidence in question (freeway and street map and the traffic citation) was very readily available. Furthermore, the evidence was important in determining the credibility of the law enforcement officer's testimony.

However, beyond this judicial misconduct, creating a necessity for intervention by this Honorable Court, is the issue of whether there was a "cover-up" by the trial judge. A matter which cannot be argued and for which no excuse can be given is the refusal of the trial judge to testify as to his state of mind and motivation in secretly receiving and acting upon the jury's request. Is the existence of a trial judge's intention, if it existed, to convict at all costs, even at the expense of disregarding constitutional and statutory imperatives, determinable without such testimony? The issue of whether or not corruption of a trial judge occurred is obviously a serious matter, going to the vitals of the judicial process and public confidence therein. The taking of evidence was necessary and such evidence could only be taken by examination of the trial judge as a witness and under oath. California statute provides a procedure for judicial testimony (California Evidence Code Section 703). Refusal of the trial judge to submit to the examination as timely requested by petitioner denies due process and equal protection under the Fourteenth Amendment to petitioner. There is no reason why, by appropriate proceeding a judge should not give relevant testimony especially when he is the only witness available as to a material matter, in this instance his intent and motive in connection with the admitted failure to accede to the jury's request (written note).

Our system of criminal justice and, indeed, all government, rests, at rock bottom, on the idea (taken from our common-law progenitors) that ours is a system of law and no one is "above

the law."

Judicial "Watergates" must not be tolerated. (Judicial action was prominent in brining "Watergates" to light.) The obvious alternative is indeed to engender destruction of judicial credibility.

Hence, especially in the climate of our times, the issue of alleged judicial "cover-up" of alleged judicial misconduct cannot be safely ignored by this, the highest Court in our land.

CONCLUSION

For the reasons outlined above the within petition for Writ of Certiorari should be granted.

September 19, 1978

Respectfully submitted,

IRVING A. KANAREK

Attorney for Petitioner

APPENDIX A

SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA
APPELLATE DEPARTMENT

F I L E D
May 23 1978
Robert L. Hamm, County Clerk
By /s/ Lois Moynihan
Deputy County Clerk

THE PEOPLE OF THE STATE OF CALIFORNIA,	) NO. APP 765
	) (Municipal Court
	) No. A823362)
Plaintiff/Respondent,	) JUDGMENT
vs.	) (On appeal from the
	) Municipal Court of
JOHN ERIC BLANCO,	) Ventura County
	) Oxnard Department)
Defandant/Appellant.	)
	)

The above-entitled cause having been fully argued, submitted and taken under advisement, IT IS ADJUDGED that the Judgment of the Muncipal Court be and hereby is affirmed.

/s/ Marvin H. Lewis
MARVIN H. LEWIS
Presiding Judge of the Superior Court
Appellate Department

/s/ Robert L. Shaw
ROBERT L. SHAW
Judge of the Superior Court
Appellate Department

DATED: May 23 1978

APPENDIX B

SUPERIOR COURT STATE OF CALIFORNIA,
COUNTY OF VENTURA

DATE: June 8, 1978	TIME: 9:00 A.M.
HON. MARVIN H. LEWIS, PRESIDING	JUDGE APPELLATE DEPARTMENT
HON. RICHARD C. HEATON	JUDGE APPELLATE DEPARTMENT
HON. ROBERT L. SHAW	JUDGE APPELLATE DEPARTMENT
Lois Moynihan	Deputy County Clerk
	Deputy Sheriff
	Court Reporter

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff/Respondent,

No. APP 765 vs. Counsel for

JOHN ERIC BLANCO,
Defendant/Appellant.
Counsel for

NATURE OF PROCEEDINGS: ORDER DENYING APPELLANT'S PETITION

Appellant's petition for rehearing or for certification to the Court of Appeal, having heretofore been submitted to the Court for consideration and decision, and the Court having only considered the same, now orders that said petition be and hereby is denied.

ROBERT L. HAMM, County Clerk

By /s/ Lois Moynihan
Lois Moynihan
Deputy County Clerk